IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 19, 2007

STATE OF TENNESSEE v. SHANDA ALENE WRIGHT

Appeal from the Circuit Court for Marshall County
No. 17166 Robert Crigler, Judge

No. M2006-02343-CCA-R3-CD - Filed February 11, 2008

The Appellant, Shanda Alene Wright, was convicted by a Marshall County jury of especially aggravated burglary, especially aggravated robbery, and aggravated robbery and received an effective sentence of sixteen years in the Department of Correction. On appeal, Wright alleges as error: (1) the introduction of non-admissible hearsay evidence; (2) the evidence is insufficient to establish proof of serious bodily injury, an essential element of both especially aggravated burglary and especially aggravated robbery; and (3) the trial court's refusal to submit a requested special jury instruction regarding serious bodily injury. After review, we conclude that Wright's issues as raised on appeal are without merit. However, compliance with Tennessee Code Annotated section 39-13-404(d), following plain error review, requires modification of Wright's conviction of especially aggravated burglary to that of aggravated burglary. The Appellant's remaining convictions of especially aggravated robbery and aggravated robbery are affirmed.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed in Part; Modified in Part

DAVID G. HAYES, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Hershell D. Koger, Pulaski, Tennessee, for the Appellant, Shanda Alene Wright.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; W. Michael McCown, District Attorney General; Weakley E. Barnard and Brooke Grubb, Assistant District Attorneys General, for the Appellee, State of Tennessee.

OPINION

Factual Background

The Appellant and four accomplices, Andrea Escalante, Reynaldo Sanchez, Alexander Prince, and Max Viliafane,[1] were participants in a home invasion, with resulting robberies, which occurred on February 24, 2006, at 1150 John Lund Road in Marshall County. The evidence presented established that, on that date, the residence was occupied by Jesus Hernandez, Gabriel Hernandez, Mario Hernandez, Noe Hinojosa, and Jesus Hinojosa.

Several days prior to the robbery, seventeen-year-old Alexander Prince visited the apartment occupied by the Appellant and her boyfriend, Reynaldo Sanchez, in Lewisburg. While at the apartment, Sanchez engaged Prince in a conversation about a planned robbery.[2] During the conversation, the Appellant and Sanchez were seated on the bed watching a movie, while Prince sat beside the bed. Sanchez asked Prince if he wanted to make "some quick money" by robbing some "Mexicans that [the Appellant] knows"[3] after the "Mexicans" receive their paychecks on Friday. Although the Appellant did not participate in this conversation, she was present at all times and was located "no more than two inches from Sanchez" during the conversation.

On Friday, February 24, Prince and his brother, Max Viliafane, also a juvenile, met with Sanchez. After speaking with Sanchez, the three got into the backseat of the Appellant's car. The Appellant was already seated in the driver's seat, and Andrea Escalante was seated in the front passenger seat. With no direction being given, the Appellant proceeded to drive approximately twenty minutes to a rural location and stopped at the entrance to a driveway. Prior to their exit from the car, Sanchez showed Vilafane and Prince a pistol. Additionally, Prince was armed with brass knuckles, and Vilafane carried a knife. Both the Appellant and Escalante told the three males, as they were exiting the car, "not to hurt nobody." Moreover, Prince and Sanchez had bandanas over their faces, and Vilafane pulled his shirt up over his face prior to their walk down the driveway toward the mobile home. At this point, the Appellant and Ms. Escalante drove away.

Moments later, at approximately 8:00 p.m., Sanchez knocked on the door of the mobile home and, when it was opened by Gabriel Hernandez, the three males barged into the home. Sanchez pointed the gun in Hernandez's face and ordered him to get onto the floor. Jesus Hernandez was in the bedroom when he heard the commotion in the living area. When Vilafane attempted to take Jesus Hernandez's wallet, which contained $500, Hernandez resisted. In the ensuing struggle, Hernandez was cut on the forearm with the knife.

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[1] The pre-sentence report states that Escalante pled guilty and received a twelve-year sentence in the Department of Correction. The report also indicates that both Prince and Vilafane, juveniles at the time, pled guilty and were each adjudicated delinquent and are confined in DHS custody. It is unclear whether Sanchez was convicted following a jury trial or pled guilty; however, the report states that Sanchez is currently serving a fifteen-year sentence in the Department of Correction.

[2] Both Prince and Viliafane were called as key witnesses for the State at the Appellant's trial and testified with regard to the Appellant's participation in the crimes.

[3] Testimony at trial established that the Appellant was acquainted with the victim Jesus Hernandez and had visited the residence on John Lund Road on multiple occasions with her mother.

Eventually four of the five residents were forced to lie on the floor in the dining room, while one of the residents managed to escape out the back door. The victims were held at gunpoint and told if they moved that they would be killed. While lying on the floor, the robbers searched the victims' pockets and took their wallets. One of the robbers took a check for $200 from Noe Hinojosa's pocket and kicked him in the head. Additionally, Jesus Hernandez was struck on the back of his head with a pistol while lying on the floor because he looked up. The robbers also searched the home for other valuables, ransacking the house and strewing clothes, electronics, and other items onto the floor.

After ordering the victims not to get up for fifteen minutes, the three males left the home and proceeded back up the driveway. When they initially arrived back at the road, the Appellant's car was not present. However, after walking a short distance on the road, the Appellant drove by and picked up the three males. The group proceeded to the Appellant and Sanchez's apartment, where Sanchez gave Prince and Vilafane each $26, Escalante $25, and the Appellant $65.

Approximately fifteen minutes after the robbers left the home, a friend, Jose Luis, came by, and the victims informed Luis of what had occurred. The men left with Luis and went to his home where the police were called. After the police arrived, Jesus Hernandez was driven to the hospital. According to Hernandez, at this point, he had trouble walking and was "half passed-out." After waiting for approximately five hours for medical treatment, Hernandez was seen by a physician, who examined both the wound on his arm and the wound on his head. According to the emergency room physician, the Appellant was "pretty uncomfortable," and pain medication was administered. Both injuries required stitches to close the wounds. The wound on Hernandez's arm, which was approximately three centimeters long, required eight stitches to close, and a scar remained. The head wound, which was approximately two centimeters long, required five stitches to close and also resulted in a scar. Hernandez was given a prescription for pain medication when he was discharged. As a result of his injuries, Hernandez missed eight days of work.

Based upon their investigation, the police interviewed the Appellant and the four accomplices, and each gave a statement admitting, in various degrees, their involvement in the crimes. In the Appellant's statement, she admitted driving the three males to the mobile home and picking them up, specifically stating that Sanchez "asked [her] to go pick up some of his friends so that they could go rob these guys." She claimed that she "kind of knew what was going on," though she asserted that she had no knowledge that anyone in the group was armed with a weapon. She further stated that she wanted no part in what was happening and that she had intended to leave the three males at the scene rather than returning to pick them up. Although she asserted that she was not given any details of what had occurred, she admitted that she was given money for gas and cigarettes after they returned. At trial, the Appellant's testimony differed significantly from her statement to the police. At trial, she admitted that she had driven the three males to the victim's residence on Lund Road, but she claimed that she had no knowledge of where she was going or that the three males intended to commit a robbery until they arrived at the victim's driveway.

On March 22, 2006, a Marshall County grand jury returned a five count indictment charging the Appellant with especially aggravated burglary, a Class B felony, especially aggravated robbery, a Class A felony, and three counts of aggravated robbery, class B felonies. Prior to trial, the State dismissed two counts of aggravated robbery, and the case proceeded to trial on September 13, 2006. The jury found the Appellant guilty as charged, and she was subsequently sentenced, as a Range I offender, to concurrent sentences of ten years for the especially aggravated burglary, to sixteen years at 100% for the especially aggravated robbery, and to ten years for the aggravated robbery. Following the denial of her motion for new trial, the Appellant filed the instant timely appeal.

Analysis

On appeal, the Appellant has raised three issues for our review: (1) whether the trial court erred in overruling the Appellant's hearsay objection to testimony from Prince regarding the conversation between Prince and Sanchez; (2) whether the evidence is sufficient to support the especially aggravated robbery and especially aggravated burglary convictions, specifically challenging the lack of proof with regard to the element of serious bodily injury for both convictions; and (3) whether the court erred in refusing to charge the Appellant's requested special instruction regarding "extreme pain" as it relates to serious bodily injury.

I. Hearsay Objection

As her first issue, the Appellant asserts that the trial court erred in overruling her hearsay objection during the testimony of Alexander Prince regarding the conversation which occurred in the Appellant's apartment between Prince and Sanchez. Prince testified that when the conversation occurred the Appellant, although not participating in the conversation, was located on the bed beside Sanchez during the entire conversation. Prince was then asked the question, "What was the discussion about?" At this point, the Appellant's attorney lodged a hearsay objection, and a bench conference ensued, at which the following colloquy occurred:

> The Court: What does the State say?
>
> [The State]: The State is going to say . . . that [Prince] and Mr. Sanchez had a conversation about robbing some Mexicans in her presence. Part of what the State has to prove for these charges is that she had knowledge.
>
> . . . .
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> The Court: . . . [Y]ou may respond.
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> [Defense Attorney]: I believe the State has to prove is that she acted with the intent to assist or whatever the language of the statute reads. . . . I think it is at best a far stretch to talk about a conversation between this fellow and another fellow saying

they had a conversation she knew and further I don't see how that meets the intent requirement for criminal responsibility.

[The Court]: . . . If you look at her statement, obviously whether it is mens rea or motive or whatever, whatever terminology you want to put, her knowledge as to whether or not there was going to be a robbery is a highly relevant issue. . . . But then - - what the [Appellant] says - - what Mr. Sanchez said falls within the exception to the hearsay rule as far as that goes.

Following this colloquy, Prince was questioned regarding the layout of the apartment, the parties positions at the time of the conversation, and the general noise level of the television. Prince then testified as follows:

Q. So tell me what was said.

. . . .

A. [Sanchez] asked me if I wanted to make some quick money. I told him, No. He goes like well, I can't make this money without you. I was like, I don't know. And then he was like, well, we are going to get some money from these Mexicans that [the Appellant] knows. I don't know. And then - - it was just think about it. I was like all right. . . .

Q. Did he tell you how y'all were going to get the money?

A. We were going to go on a Friday after they got paid and receive the money.

Q. Did he explain how you were going to receive it?

A. We were going to rob them.

Q. He said y'all were going the rob Mexicans on a Friday.

A. Yes, sir.

Q. After they got paid?

A. Yes, sir.

As observed by its ruling, the trial court in this case found that the extrajudicial statement fell within an exception to the hearsay rule, however, the court failed to note which exception applied. On appeal, the State incorrectly argues that "the trial court correctly ruled that Prince's testimony

was not hearsay." The State contends that the testimony was not hearsay because it was not admitted to show the truth of the matter asserted. We disagree.

Following our review of the record, we conclude that the hearsay testimony offered by Prince falls within the exception of "a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy." *See* Tenn. R. Evid. 803(1.2)(E). The rationale for this exception is the principle of agency, under which each conspirator is bound to the actions and statements made by other conspirators during the course of and in furtherance of a common purpose. *State v. Henry*, 33 S.W.3d 797, 801 (Tenn. 2000). The Tennessee Supreme Court has held that:

> For a statement to be admissible under this exception, the prosecution must establish: 1) that there is evidence of the existence of a conspiracy and the connection of the declarant and the defendant to that conspiracy; 2) that the declaration was made during the pendency of the conspiracy; and 3) that the declaration was made in furtherance of the conspiracy.

Id. at 801-02. These requirements must be established by a preponderance of the evidence. *State v. Stamper*, 863 S.W.2d 404, 406 (Tenn. 1993). If a conspiracy is shown to exist, the co-conspirator's statement is admissible even though no conspiracy has been formally charged. *State v. Lequire*, 634 S.W.2d 608, 612 (Tenn. Crim. App. 1981); *see State v. Alley*, 968 S.W.2d 314, 316 (Tenn. Crim. App. 1997).

A conspiracy is defined as a combination between two or more persons to do a criminal or unlawful act by criminal or unlawful means. *Alley*, 968 S.W.2d at 316; *State v. Gaylor*, 862 S.W.2d 546, 553 (Tenn. Crim. App. 1992); *State v. Houston*, 688 S.W.2d 838, 841 (Tenn. Crim. App. 1984). The State only has to show an implied understanding between the parties, not formal words or a written agreement, in order to prove a conspiracy. *Gaylor*, 862 S.W.2d at 553. "The unlawful confederation may be established by circumstantial evidence and the conduct of the parties in the execution of the criminal enterprises." *Id*. "During the course of" the conspiracy means that the conspiracy must have been occurring or ongoing at the time the statement was made. *State v. Walker*, 910 S.W.2d 381, 385 (Tenn. 1995); *Gaylor*, 862 S.W.2d at 554. If the conspiracy had not begun or had already concluded when the statement was made, the statement will not be admissible under the co-conspirator exception. *Id*. With regard to the requirement that the statement be made in furtherance of the conspiracy, the statement must be one that will advance or aid the conspiracy in some way. *State v. Heflin*, 15 S.W.3d 519, 523 (Tenn. Crim. App. 1999).

After review, we conclude that the proof establishes the three elements of this hearsay exception by a preponderance of the evidence, although no conspiracy was charged in this case. The evidence at the Appellant's trial demonstrates that Sanchez, the Appellant, Prince, and Vilafane[4] joined in an unlawful confederation and made plans to rob the victims in this case. The Appellant's membership in the conspiracy is sufficiently established by her admissions to the police regarding

[4]The record in the Appellant's case fails to establish Escalante's participation in the conspiracy.

her knowledge of the planned robbery, her conduct in the execution of the criminal enterprise, and her sharing in the benefits of the robberies. Moreover, the co-conspirators' statements were made during the pendency of the conspiracy. The proof establishes that Sanchez's discussion with Prince was in furtherance of the conspiracy and for the purpose of recruiting Prince's aid in completing the targeted crimes. As evidenced by the proof, the place, the date, and the victims had already been selected. Moreover, we would observe that, "even if the statements are made in the embryonic stages of the conspiracy, they are admissible against those who join the conspiracy later, so long as the statements are made during the course of, and in furtherance of the conspiracy." *U.S. v. Salerno*, 796 F. Supp. 1099, 1102 (N.D. III. 1991). Accordingly, it was not error to allow the challenged testimony.

II. Motion for Judgment of Acquittal/Sufficiency of the Evidence

Next, the Appellant contends that the trial court erred in denying her motion for judgment of acquittal, both oral and written, with regard to the especially aggravated burglary and especially aggravated robbery convictions, because the State failed to establish the element of serious bodily injury, a requisite element of each offense. She further contends that, inherent within her argument, is the issue that the evidence is insufficient to support the two convictions. No challenge is made to the aggravated robbery conviction. Initially, we would note that a motion for judgment of acquittal requires that the trial court determine the sufficiency of the evidence. Tenn. R. Crim. P. 29(a). Accordingly, the standard of review for a motion for judgment of acquittal is the same as that utilized when analyzing the sufficiency of the convicting evidence. *State v. Blanton*, 926 S.W.2d 953, 957-58 (Tenn. Crim. App. 1996).

In considering the issue of sufficiency of the evidence, we apply the rule that where the sufficiency of the evidence is challenged, the relevant question for the reviewing court is "whether, after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *see also* Tenn. R. App. P. 13(e). Moreover, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). This court will not reweigh or reevaluate the evidence presented. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978).

"A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). These rules are applicable to findings of guilt predicated upon direct

evidence, circumstantial evidence, or a combination of both. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

As evidenced by the indictment and the proof at trial, the Appellant was prosecuted under a theory of criminal responsibility for the conduct of another for the crimes of especially aggravated burglary and especially aggravated robbery. Especially aggravated burglary, as relevant in this case, is defined as burglary of a habitation whereby one, without the effective consent of the property owner, enters a building and commits or attempts to commit a felony, theft, or assault, and the victim suffers serious bodily injury. T.C.A. § 39-14-402(a)(3), -404(a)(1),(2) (2006). Especially aggravated robbery, as relevant here, is defined as the intentional or knowing theft of property from the person of another by violence of putting the person in fear which is accomplished with a deadly weapon and where the victim suffers serious bodily injury. T.C.A. § 39-13-401(a), -403(a)(1)(2) (2006). Our criminal code defines "bodily injury" as including a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty. T.C.A. § 39-11-106(a)(2) (2006). Serious bodily injury is bodily injury that involves: (a) a substantial risk of death; (2) protracted unconsciousness; (3) extreme physical pain; (4) protracted or obvious disfigurement; or (5) protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty. *Id*. at (34).

Tennessee Code Annotated section 39-11-402(2) (2006) provides that a defendant is criminally responsible for the conduct of another when, "[a]cting with intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense, the defendant solicits, directs, aids, or attempts to aid another person to commit the offense[.]" "T]he statute makes a defendant criminally liable for the acts of confederates that are the natural and probable consequence of the crime in which the defendant participated." *State v. Richmond*, 90 S.W.3d 648, 655 (Tenn. 2002). This is true so long as "the crimes committed by others were the foreseeable result of the consummation of the intended crime." *Id*.

With regard to the sufficiency of the convicting proof, the Appellant challenges only the element of serious bodily injury, which is required for both offenses. Relying upon *State v. Sims*, 909 S.W.2d 46 (Tenn. Crim. App. 1995), and *State v. Zonge*, 973 S.W.2d 250 (Tenn. Crim. App. 1997), the Appellant contends that the State established only bodily injury. Both of these cases reversed convictions in which the State had failed to establish serious bodily injury, holding that "extreme physical pain" was not established based upon the evidence. We would agree in this case that the State failed to establish bodily injury under a theory of extreme physical pain. Although the victim Hernandez testified that he was in great pain for several days and prescription pain medication was administered, we would agree that the pain suffered in this case "is not of the same degree as that associated with other classifications of serious bodily injury." *See Zonge*, 973 S.W.2d at 255.

Nonetheless, serious bodily injury may also be established by a protracted or obvious disfigurement. It was not disputed that Hernandez received two injuries during the commission of the robbery. He was struck on his head with a pistol, resulting in a scalp wound, which required five stitches to close, and left a scar. Also, he received a knife wound to the forearm, requiring eight

stitches to close, which left a scar some three centimeters in length. These scars were shown to the jury at trial, and we conclude they were sufficient to establish the element of serious bodily injury. *See State v. Clay B. Sullivan*, No. M2004-03068-CCA-R3-CD (Tenn. Crim. App. at Nashville, Mar. 10, 2006) (holding two-inch scar was sufficient for jury to find protracted and obvious disfigurement).

Following our review, we conclude that the evidence presented at trial established the crimes of especially aggravated robbery and especially aggravated burglary and was sufficient to establish the Appellant's guilt in these crimes under a theory of criminal responsibility. There is no dispute that three armed males entered the victim's residence on the evening of February 24, and took money and checks from the residents. While inside, two of the victims received injuries from the robbers, at least one of which was sufficient to establish serious bodily injury. With regard to the Appellant, the proof presented is sufficient to establish that the Appellant was present during the planning of the robbery, drove the four accomplices in her car to and from the victim's residence, and received a portion of the proceeds of the robberies. The Appellant's statement to the police acknowledges participation in the crimes. Moreover, evidence established that of the five individuals involved in the crimes, only the Appellant had a prior relationship with a victim of the crimes. Thus, we conclude that the evidence is sufficient to establish that the Appellant acted with the intent to promote or assist in the commission of the offenses.

Despite finding the evidence sufficient, as a matter of plain error, *see* Tenn. R. App. P. 13(b), we are constrained to note that Tennessee Code Annotated section 39-14-404(d) prohibits prosecution of acts of especially aggravated burglary *both* as especially aggravated burglary and as some other offense, such as the especially aggravated robbery in the present case. T.C.A. § 39-14-404(d) (2003); *see State v. James Ruben Conyers*, No. M2002-01007-CCA-R3-CD (Tenn. Crim. App. at Nashville, Sept. 5, 2002). As such, the Appellant's conviction of especially aggravated burglary must be reduced to aggravated burglary. In view of our modification of the conviction to aggravated burglary, we impose the presumptive minimum sentence of three years for this Class C felony. The Appellant's effective sentence of sixteen years remains unaffected.

III. Special Jury Instruction

Finally, the Appellant contends that the trial court erred by refusing to charge the jury with the following special instruction with regard to "extreme pain":

> In deciding the differences between the term "pain" in the context of "bodily injury," and the term "extreme pain" in the context of "serious bodily injury," you should consider "extreme pain" as being in the same class of injury which involves a substantial risk of death, protracted unconsciousness, protracted or permanent disfigurement or the loss of impairment of the use of a bodily member, organ or mental faculty.

The court rejected the proposed instruction, stating that:

> . . . Bodily injury says physical pain . . . . Serious bodily injury says extreme pain. . . . I think you can make that argument without me giving this instruction.
>
> . . . [Y]ou can compare and contrast them. It is not necessary for me to give that definition . . . .

Instead, the court charged the jury with regard to this issue utilizing the standard pattern jury instruction. However, according to the Appellant, she was entitled to the additional instruction because it was a correct statement of the law and fundamentally related to the facts of the case and her defense.

Under the United States and Tennessee Constitutions, a defendant has a constitutional right to a trial by jury, *see* U.S. CONST. amend VI; TENN. CONST. art. 1, § 6, which includes the "constitutional right to a correct and complete charge of the law." *State v. Teel*, 793 S.W.2d 236, 249 (Tenn. 1990). The proper function of a special instruction is to supply an omission or correct a mistake made in the general charge, to present a material question not treated in the general charge, or to limit, extend, eliminate, or more accurately define a proposition already submitted to the jury. *State v. Cozart*, 54 S.W.3d 242, 245 (Tenn. 2001) (citing *Chesapeake, O. & S.W.R. Co. v. Foster*, 13 S.W. 694, 694 (1890)). Denial of a special or additional instruction is error only if the trial court's jury charge does not fully and fairly state the applicable law. *State v. Bryant*, 654 S.W.2d 389, 390 (Tenn. 1983); *State v. Thien Duc Le*, 743 S.W.2d 199, 202-03 (Tenn. Crim. App. 1987). On appeal, we review the denial of a special instruction in the context of the entire jury charge, read as a whole. *State v. Phipps*, 883 S.W.2d 138, 142 (Tenn. Crim. App. 1994). We will reverse the trial court's ruling only if the jury was unfairly instructed on the legal issues or was misled regarding the applicable law. *See id.*

After careful review of the trial court's jury charge in this case, we conclude that denial of the request was proper because the jury was given a complete and accurate recitation of the applicable law. As noted by the State, the instruction given was a verbatim recitation of the statute defining the terms. Moreover, as stated by the court, trial counsel was free to illustrate these distinctions to the jury during his argument. Based upon the record before us, we cannot conclude that the Appellant was denied an accurate and full statement of the law.

CONCLUSION

The Appellant's conviction for especially aggravated burglary is modified to reflect a conviction of aggravated burglary, and a sentence of three years is imposed. We remand to the trial court for entry of a corrected judgment form to reflect this sentencing modification. The Appellant's convictions for especially aggravated robbery and aggravated robbery are affirmed.

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DAVID G. HAYES, JUDGE